

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re:

BED BATH & BEYOND INC., *et al.*,

Debtors.¹

Case No.: 23-13359 (VFP)

Chapter 11

(Jointly Administered)

**MOTION FOR ENTRY OF AN ORDER AUTHORIZING DALY CITY SERRAMONTE
CENTER, LLC TO FILE UNDER SEAL THE (I) SUPPLEMENTAL OBJECTION IN
FURTHER SUPPORT OF OPPOSITION OF DALY CITY SERRAMONTE CENTER,
LLC TO DEBTORS' MOTION FOR ORDER AUTHORIZING DEBTORS TO ASSUME
AND ASSIGN LEASE FOR STORE NO. 3108; AND (II) DECLARATION OF ERNST A.
BELL IN SUPPORT OF OPPOSITION OF DALY CITY SERRAMONTE CENTER, LLC
TO DEBTORS' MOTION FOR ORDER AUTHORIZING DEBTORS
TO ASSUME AND ASSIGN LEASE FOR STORE NO. 3108**

Daly City Serramonte Center, LLC ("Landlord"), landlord to debtor Bed Bath &

Beyond Inc., hereby files this motion (the "Seal Motion") for entry of an order, substantially in

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and Debtors' service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

the form submitted concurrently herewith (the “Proposed Order”), authorizing Landlord to file under seal and redact certain portions of the (i) *Supplemental Objection in Further Support of Opposition of Daly City Serramonte Center, LLC to Debtors’ Motion for Order Authorizing Debtors to Assume and Assign Lease for Store No. 3108* (the “Supplemental Objection”);² and (ii) *Declaration of Ernst A. Bell in Support of Opposition of Daly City Serramonte Center, LLC to Debtors’ Motion for Order Authorizing Debtors to Assume and Assign Lease for Store No. 3108* (the “Declaration”). In support of this Seal Motion, Landlord respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction to consider the Seal Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested are section 107 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9018-1 of the Local Rules of the United States Bankruptcy Court for the District of New Jersey (the “Local Rules”).

BACKGROUND

3. On April 23, 2023, each of the above-captioned debtors (collectively, the “Debtors”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned bankruptcy cases (the “Chapter 11 Cases”).

4. No trustee has been appointed in the Chapter 11 Cases and Debtors are operating their businesses as debtors-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).

² All terms capitalized but not defined herein will be given the definitions assigned to them in the Supplemental Objection.

5. Pursuant to a written lease agreement (as amended or supplemented, the “Lease”), Landlord leases to Debtors approximately 21,946 square feet of retail premises located at 149 Serramonte Center #150, Daly City, California, which is part of the shopping center commonly referred to as Serramonte Center.

6. On May 3, 2023, Debtors filed their *Motion for Entry of an Order (I) Establishing Procedures to Sell Certain Leases, (II) Approving the Sale of Certain Leases, and (III) Granting Related Relief*,³ which the Court granted on May 22, 2023.⁴ On June 30, 2023, Debtors filed the *Notice of Assumption of Certain Unexpired Leases*, pursuant to which Debtors sought to assume and assign the Lease to Burlington Coat Factory Warehouse Corporation (“Assignee”).⁵

7. On July 12, 2023, Landlord filed the *Limited Objection and Joinder of Regency Centers L.P. and Daly City Serramonte Center, LLC to Debtors’ Motion for Order Authorizing Debtors to Assume and Assign Unexpired Non-Residential Real Property Leases for Store Nos. 3108 and 385* (the “Objection”).⁶

8. In further support of the Objection, Landlord filed the Supplemental Objection and the Declaration immediately prior to filing this Seal Motion.

RELIEF REQUESTED

9. By this Seal Motion, Landlord seeks entry of the Proposed Order (i) authorizing Landlord to file unredacted copies of the Supplemental Objection and the Declaration under seal; (ii) ordering that the unredacted versions of the Supplemental Objection and the Declaration remain confidential and not be made available to anyone other than the

³ Docket No. 193.

⁴ Docket No. 422.

⁵ Docket No. 1157.

⁶ Docket No. 1328.

Court; and (iii) authorizing Landlord to redact confidential portions of the Supplemental Objection and the Declaration that disclose sensitive commercial information and to file such redacted versions on the docket in the Chapter 11 Cases.

BASIS FOR RELIEF

10. Section 107(b) of the Bankruptcy Code provides, in pertinent part:

On the request of a party in interest, the bankruptcy court shall...
(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information....⁷

11. Bankruptcy Rule 9018, in turn, explains the process by which a party-in-interest may seek relief under Bankruptcy Code section 107(b):

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information....⁸

12. Once it is established that information sought to be protected can be categorized as confidential commercial information, the Bankruptcy Code does not require a party seeking protection to demonstrate cause. In fact, if information qualifies as commercial information under Bankruptcy Code section 107(b), then “the court is *required* to protect a requesting interested party and has no discretion to deny the application.”⁹

13. Landlord submits that certain discrete information in the Supplemental Objection and the Declaration falls within the scope of information that the Court may protect pursuant to Bankruptcy Code section 107(b)(1) and Bankruptcy Rule 9018. Courts in this Circuit have noted that section 107(b) is “meant to shield entities from disclosure of commercial

⁷ 11. U.S.C. § 107(b).

⁸ Fed. R. Bankr. P. 9018; *see also* D.N.J. LBR 9018-1.

⁹ *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original); *accord In re Farmland Indus., Inc.*, 290 B.R. 364, 368 (Bankr. W.D. Mo. 2003).

information that, if disclosed, would result in “an unfair advantage to competitors” and “cause the entity commercial injury.”¹⁰

14. The Supplemental Objection and the Declaration contain certain commercial information, including financial and business terms. Disclosure of such information would be detrimental to the respective business interests of Landlord and its tenants. Requiring Landlord to disclose such information could have a chilling effect by discouraging prospective tenants from leasing retail space offered by Landlord.

15. Accordingly, Landlord requests entry of the Proposed Order authorizing it to redact discrete information included in the Supplemental Objection and the Declaration that will be available on the public docket in the Chapter 11 Cases.

NOTICE

16. Notice of this Seal Motion has been provided to: (a) the office of the United States Trustee for the District of New Jersey; (b) counsel to Debtors; (c) counsel to the Official Committee of Unsecured Creditors; (d) counsel to the Prepetition ABL Agent; (e) counsel to the DIP Agent; and (f) all parties requesting notices pursuant to Bankruptcy Rule 2002. In light of the relief requested herein, Landlord submits that no other or further notice need be provided.

¹⁰ *In re Altegrity, Inc.*, 2015 WL 10963572, at *3 (Bankr. D. Del. July 6, 2015) (internal citations and quotations omitted).

CONCLUSION

WHEREFORE, Landlord respectfully requests entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: August 18, 2023

Respectfully submitted,

/s/ Robert L. LeHane

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In re:

BED BATH & BEYOND INC., *et al.*,

Debtors.¹

Case No.: 23-13359 (VFP)

Chapter 11

(Jointly Administered)

ORDER CONCERNING REQUEST TO SEAL DOCUMENTS

The relief set forth on the following pages is hereby **ORDERED**.

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and Debtors' service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

Debtors: BED BATH & BEYOND INC., et al.
Case No. 23-13359 (VFP)
Caption of Order: ORDER CONCERNING REQUEST TO SEAL DOCUMENTS

On request of Daly City Serramonte Center, LLC to (i) file under seal unredacted copies of the (a) *Supplemental Objection in Further Support of Opposition of Daly City Serramonte Center, LLC to Debtors' Motion for Order Authorizing Debtors to Assume and Assign Lease for Store No. 3108* (the "Supplemental Objection"); and (b) *Declaration of Ernst A. Bell in Support of Objection of Daly City Serramonte Center, LLC to Debtors' Motion for Order Authorizing Debtors to Assume and Assign Lease for Store No. 3108* (the "Declaration"), which shall both remain confidential and not be made available to anyone other than the Court; and (ii) file versions of the Supplemental Objection and Declaration with all confidential portions redacted;

And the Court having considered the request and any objection thereto, it is

- ☐ ORDERED that the request is denied and the Supplemental Objection and the Declaration shall be deleted from the Court's electronic filing system.
- ☐ ORDERED that the request is granted and that Landlord is authorized to file (i) unredacted versions of the Supplemental Objection and the Declaration under seal; and (ii) versions of the Supplemental Objection and the Declaration with all confidential portions redacted.